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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/930,917	08/16/2001	John E. Gunderman	20386/305	2246

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EXAMINER

GELLNER, JEFFREY L

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 05/03/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/930,917

Applicant(s)

GUNDERMAN ET AL.

Examiner

Jeffrey L. Gellner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 August 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

PETER M. POON
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600



Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 August 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "loop . . . positioned in a different plane as the two portions of the U-shaped member" of Claim 23 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 6,7,10, 11, 16, 18, 21,22,and 23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In Claim 6, line, 6, the subject and verb lack agreement (*i.e.*, "end . . . are adapted").

Note: Examiner assumes the language to be --end . . . is adapted--).

In Claim 10, line 5, the line is ended with a period ".". This makes the claim indefinite because the entire claim must be one sentence.

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In Claim 18, line, 6, the subject and verb lack agreement (*i.e.*, "end . . . are adapted").

Note: Examiner assumes the language to be --end . . . is adapted--).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,3,4,8, 9, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Hillestad (US 5,179,799).

As to Claim 1, Hillestad discloses a stackable plant support (Figs. 1 and 4) comprising an upper ring (17 of Fig. 1); a lower ring (15 of Fig. 1); at least one leg (11,12,13 of Fig. 1) attached to the upper and lower rings, the leg adapted to support the upper and lower rings and engage the ground, the leg comprising a ledge (Hooked region around leadline of 15c in Fig. 1) shaped so as to permit application of a downward force by a plant support user to engage the plant support with the ground; the plant support shaped to enclose plants (col. 2 lines 42-45).

As to Claim 3, Hillestad further discloses a middle ring (Fig. 1).

As to Claims 4 and 15, Hillestad further discloses the support made of wire (col. 1 lines 67-68) which would be galvanized.

As to Claim 8, Hillestad further discloses the upper and lower rings shaped so as to permit insertion of a plant container within the support, the upper ring adapted to engage a portion of the plant container.

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As to Claim 9, Hillestad further discloses the rings attached to the leg by wrap (Figs. 1 and 4).

Claims 1, 6, 10, 12, 14, 16, 17, 18, and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Thornhill (Des. 259,929).

As to Claim 1, Thornhill discloses a stackable plant support (Fig. 5) comprising an upper ring (Fig. 5); a lower ring (Fig. 5); at least one leg (Fig. 5) attached to the upper and lower rings, the leg adapted to support the upper and lower rings and engage the ground, the leg comprising a ledge (Fig. 5) shaped so as to permit application of a downward force by a plant support user to engage the plant support with the ground; the plant support shaped to enclose plants.

As to Claim 6, Thornhill further discloses the upper ring attached to the leg to form a loop above the upper ring (Fig. 5) and the end adapted to engage the ground (end).

As to Claims 10 and 16, Thornhill discloses a stackable plant cage apparatus (Fig. 5) comprising an two arcuate (circular) paralleled vertically spaced horizontally disposed members (upper ring and lower ring of Fig. 5); at least two legs (leg of Fig. 5) formed in an inverted U shape; wherein the cage is adapted to support a plant; a ledge (Fig. 5); and a loop (Fig. 5).

As to Claim 12, Thornhill discloses a wire structure for supporting plants or plant containers (Fig. 5) comprising a wire structure with a vertical axis (Fig. 5) the wire structure having two rings paralleled vertically spaced horizontally disposed members (upper ring and lower ring of Fig. 5); at least two U shaped legs (leg of Fig. 5); an interior volume; a ledge (Fig. 5); and a loop (Fig. 5). The structure of Thornhill would inherently perform the method steps recited in Claim 12 when used.

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As to Claim 14, the method steps of Claim 12 are disclosed as described above. Not disclosed is applying a downward force to the ledge to insert the legs into the ground. The structure of Thornhill would inherently be used in this fashion.

As to Claim 17, Thornhill discloses a support member (leg of Fig. 5) for a plant support apparatus comprising at least one leg (Fig. 5) attachable to an upper and lower ring and a ledge (Fig. 5).

As to Claim 18, Thornhill further discloses a closed end (Fig. 5), a loop (Fig. 5), and the end of the two portions of the U shaped member adapted to engage the ground.

As to Claim 22, Thornhill further discloses the loop in the same plane as the open ends of the U shaped member.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hillestad (US 5,179,799) in view of Thornhill (Des. 359,929).

As to Claim 2, the limitations of Claim 1 are disclosed as described above. Not disclosed is the lower ring have a larger diameter than the upper ring. Thornhill, however, discloses the lower ring having a larger diameter (Fig. 1). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the support of Hillestad by having the lower ring

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with the largest diameter as disclosed by Thornhill so that the support can also be used as a greenhouse (see title of Thornhill).

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hillestad (US 5,179,799) in view of Elliott (US 5,640,802).

As to Claim 5, the limitations of Claim 1 are disclosed as described above. Not disclosed is the support made of plastic. Elliott, however, discloses a support made of plastic (col. 2 lines 66). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the support of Hillestad by making it of plastic as disclosed by Elliott so that it is durable enough for reuse (see Elliott at col. 1 lines 48-49).

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Thornhill (Des. 359,929) in view of Wourms et al. (US 6,119,393).

As to Claim 13, the method steps of Claim 13 are disclosed as described above. Not disclosed is the step of inserting a plant container into the interior volume of the wire structure. Wourms et al. however discloses inserting a plant container into the interior of a wire structure (Fig. 2). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Thornhill by inserting a plant container as disclosed by Wourms et al. so as to use the structure with a water pond (see Wourms et al. at abstract).

Claims 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thornhill (Des. 359,929).

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As to Claims 19 and 20, the limitations of Claim 17 are disclosed as described above. Not disclosed is the cage made of wire. Examiner takes official notice that it is old and notoriously well known in the art to make plant cages of wire and plastic. It would have been obvious to one of ordinary skill in the art at the time of the invention to make the cage of Thornhill of either wire or plastic depending upon cost of materials.

Allowable Subject Matter

Claims 7, 11, 21, and 23 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Peck, Fernandez, and Smith disclose in the prior art various plant supports. Peterson discloses in the prior art a ledge. Slaughter discloses inverted U-shaped supports.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jeffrey L. Gellner whose telephone number is 703.305.0053. The Examiner can normally be reached Monday through Thursday from 8:30 am to 4:00 pm. The Examiner can also be reached on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Peter Poon, can be reached at 703.308.2574. The fax phone numbers for the

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Technology Center where this application or proceeding is assigned are 703.305.7687,
703.305.3597, and 703.306.4195.

Any inquiry of a general nature or relating to the status of this application or proceeding
should be directed to the receptionist whose telephone number is 703.308.1113.



Jeffrey L. Gellner



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TECHNOLOGY CENTER 3600